

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

VICTOR BERRELLEZA-VERDUZCO,

Defendant.

Case No. CR12-62RSL

ORDER DENYING  
DEFENDANT'S MOTION  
FOR SENTENCE  
REDUCTION AND MOTION  
TO APPOINT COUNSEL

This matter comes before the Court on defendant's *pro se* "Motion for Sentence Reduction pursuant to 18 U.S.C. § 3582(c)(2), Amendment 821, Part B" (Dkt. # 1603) and "Motion for Appointment of Counsel" (Dkt. # 1609). Having considered the parties' submissions and the record contained herein, the Court DENIES defendant's motions.

## I. Background

Defendant is a 34-year-old inmate currently incarcerated at Victorville Medium II Federal Correctional Facility. *See Find an Inmate*, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited April 29, 2024). On April 23, 2013, defendant pleaded guilty to (1) conspiracy to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846; (2) conspiracy to engage in money laundering, in violation of 18 U.S.C. §§ 1956(h), 1956(a)(1)(A)(I), and 1956(a)(1)(B)(I); (3) conspiracy to interfere with commerce by robbery, in violation of 18 U.S.C. § 1951; and (4) conspiracy to possess firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(o). Dkt. # 856.

ORDER DENYING DEFENDANT'S MOTION FOR SENTENCE REDUCTION AND  
MOTION TO APPOINT COUNSEL - 1

1       As part of his guilty pleas, defendant admitted he directed and supervised other members  
 2 of the conspiracy in smuggling large amounts of heroin and methamphetamine into the United  
 3 States for distribution and admitted to engaging in financial transactions designed to conceal the  
 4 illegal nature, source, location, ownership, and control of the drug proceeds. Dkt. # 856 ¶¶ 8.b,  
 5 8.f., 8.i. In furtherance of the drug trafficking conspiracy, defendant admitted to working with  
 6 others to acquire firearms in the United States and smuggle them into Mexico, and he admitted  
 7 to conspiring to obtain drugs and drug proceeds from a rival drug organization by use of actual  
 8 or threatened force, violence, and fear. Dkt. # 856 ¶¶ 8.g., 8.h., 8.j.

9       Defendant's Total Offense Level at sentencing was 43<sup>1</sup> and Category I, with a guideline  
 10 range of "life." Dkts. # 1074, # 1075 ¶¶ 77, 80; *see also* USSG § 5A. The Court sentenced the  
 11 defendant to 240 months on all four counts to run concurrently. Dkt. # 1100 at 2. Defendant is  
 12 scheduled to be released on July 31, 2029. *Find an Inmate*, Fed. Bureau of Prisons,  
 13 <https://www.bop.gov/inmateloc/> (last visited April 29, 2024).

14       **II. Discussion**

15       **A. Motion to Reduce Sentence**

16       Defendant now seeks a reduction pursuant to Amendment 821 to the USSG, Part B,  
 17 subpart 1, *See* Dkt. # 1603, "which provides a two-level reduction in the offense level for certain  
 18 'zero-point offenders'—that is, defendants with no criminal history whose offenses meet the  
 19 guideline's criteria." *United States v. Rather*, No. CR21-0079-JCC, 2024 WL 1533889, at \*1  
 20 (W.D. Wash. Apr. 9, 2024) (citing USSG § 4C1.1(a)).

21       To qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2), two conditions  
 22 must be met: (1) the defendant must have been sentenced to a term of imprisonment  
 23 based on a sentencing range that has been lowered by a retroactively applicable  
 24 guidelines amendment; and (2) the sentence reduction sought must be consistent  
 25 with the Sentencing Commission's applicable policy statements. *United States v.*  
*Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam).

26  
 27       <sup>1</sup> Defendant's Total Offense Level was 45, Dkt. # 1075 ¶ 74. But, "[p]ursuant to Chapter 5, Part  
 28 A (comment n.2), in those rare instances where the total offense level is calculated in excess of 43, the  
 offense level will be treated as a level 43." *Id.* ¶ 77.

1  
2 *Rather*, 2024 WL 1533889, at \*1. Defendant's motion fails under both prongs.

3       First, the Amendment provides a two-level reduction for zero-point offenders who meet  
4 certain criteria, including but not limited to, (1) "the defendant did not possess, receive,  
5 purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon  
6 (or induce another participant to do so) in connection with the offense"; and (2) "the defendant  
7 did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a  
8 continuing criminal enterprise, as defined in 21 U.S.C. 848." USSG § 4C1.1(a). Here, the  
9 defendant admitted to acquiring and smuggling several firearms from the United States into  
10 Mexico in connection with the drug trafficking conspiracy. Dkt. # 856 at ¶ 8.h. Defendant also  
11 stipulated to an upward adjustment for his role in "recruiting and directing the activities of  
12 others." *Id.* ¶ 9.b. Therefore, the amendment is inapplicable to defendant's sentence.

13       Second, even assuming defendant's sentence was eligible for a reduction, a reduction  
14 would not be consistent with the Sentencing Commission's applicable policy statements. USSG  
15 § 1B1.10(b)(2) provides that "the court shall not reduce the defendant's term of imprisonment  
16 under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum  
17 of the amended guideline range." Here, defendant's total offense level would be lowered two  
18 levels from 45 to 43, resulting in an "amended" sentencing range of "life." *See* USSG § 5A.  
19 Because defendant's 240-month sentence is well below the amended guideline range, he is  
20 ineligible for a reduction.

21       **B. Motion to Appoint Counsel**

22       Because the underlying basis for defendant's motion for a sentence reduction lacks merit,  
23 his motion for appointment of counsel is denied.<sup>2</sup>

24       **III. Conclusion**

25       For all the foregoing reasons, IT IS HEREBY ORDERED that:

26  
27       

---

28       <sup>2</sup> Consistent with General Order 03-19, the Federal Public Defender's Office was provided with  
a copy of the motion, and they declined to seek appointment.

- 1      1. Defendant's motion for sentence reduction (Dkt. # 1603) is DENIED.
- 2      2. Defendant's motion to appoint counsel (Dkt. # 1609) is DENIED.

3  
4      IT IS SO ORDERED.  
5

6      DATED this 30<sup>th</sup> day of April, 2024.  
7

8        
9

10      Robert S. Lasnik  
11      United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28